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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

DEVELOPERS SURETY AND INDEMNITY
COMPANY,

Plaintiff,

vs.

LEE E. BAKER, JR. and
DISCOVERY CONSTRUCTION, INC.

Defendants.

Case No. 3:16-cv_____

INDEMNITY COMPLAINT

COMES NOW Plaintiff, Developers Surety and Indemnity Company (“Developers”), by counsel, Law Offices of Charles G. Evans, and for its indemnity complaint against Defendants, Lee E. Baker (“Baker”) and Discovery Construction, Inc., (“Discovery”) states and alleges as follows:

GENERAL ALLEGATIONS

1. Developers wrote surety bonds for construction work performed by Discovery in the State of Alaska.
2. Developers issued a Performance/Warranty Guarantee Bond, (“the Bond”) naming Discovery as the Principal and the Municipality of Anchorage (“MOA”) as the Obligee. A copy of the Bond is attached as Exhibit A.

3. The Bond was procured to secure the faithful and complete performance by Discovery to the MOA of Subdivision Agreement No 02-007.
4. In exchange for the issuance of the Bond and other bonds, Baker and Discovery executed a General Agreement of Indemnity, (“the GAI”) a copy of which is attached as Exhibit B.
5. On or about January 29, 2013, Baker pled guilty to 12 counts of making “False Statements to Influence a Financial Institution,” a violation of 18 U.S.C. §1014, with respect to a different construction project performed by Discovery.
6. On or about May 6, 2013, the MOA served Discovery with a notice that deficiencies existed with respect to Subdivision Agreement No 02-007. The May 6, 2013 letter is attached as Exhibit C.
7. Among other problems, the MOA noted that the subdivision did not have a functioning drainage system and that the lack of drainage system caused regular and adverse impacts to the surrounding areas.
8. The May 6, 2013 notice further advised that Discovery had 30 days from the date of the letter to submit a plan to address the drainage problems.
9. The letter from the MOA was signed by Lee Baker, Sr, on or about May 13, 2016.
10. By June 14, 2013, neither Baker nor Discovery responded to the MOA’s May 6, 2013 demand.
11. By letter dated June 14, 2013, the MOA notified Developers that Discovery was in default and made demand on the Bond in its full penal sum, \$213,340.80. A copy of the June 14, 2013 letter is attached as Exhibit D.
12. On or about March 27, 2015, Developers settled and adjusted the MOA’s claim and paid the MOA \$150,000.00 in exchange for a complete Release and Assignment of rights by the MOA to Developers.

13. By letter dated February 22, 2016, Developers demanded that Baker and Discovery indemnify and hold Developers harmless for Developers' losses in the form of paid claims, bond premiums, and its actual and reasonable costs and attorneys' fees.

14. Neither Baker nor Discovery replied to the February 22, 2016 letter.

JURISDICTION AND VENUE

15. Developers reincorporates allegations 1 through 14 as though contained herein.

16. Developers is a surety corporation, organized and incorporated under the laws of the State of Iowa.

17. Developers' primary place of business is in the State of California.

18. Developers maintains no offices in the State of Alaska.

19. Upon information and belief, Lee E. Baker ("Baker") is a resident of the State of Alaska or, in the alternative, the State of Texas.

20. Discovery Construction, Inc. ("Discovery") is an Alaska Corporation, with its primary place of business in the State of Alaska.

21. The amounts due and owing Developers by Baker and Discovery exceed \$75,000.00, exclusive of interest and costs.

22. This action arises under, and this Court has jurisdiction pursuant to, 28 USCA §1332.

23. Venue is proper as the work for which Developers bonded Discovery occurred in the Municipality of Anchorage, State of Alaska.

COUNT I. BREACH OF INDEMNITY CONTRACT; FAILURE TO INDEMNIFY AND HOLD HARMLESS

24. Developers reincorporates its allegations 1 through 23 as though contained herein.

25. Baker and Discovery agreed to indemnify and hold harmless Developers from and against any and all liability, loss, claims, demands, costs, damages, attorneys' fees and expenses of

whatever kind and nature, together with interest thereon at the maximum rate allowed by law, which Surety may sustain or incur by reason of or in consequence of the execution by Surety of any of any Bond.

26. Baker and Discovery failed to indemnify Developers and hold it harmless from the claims of the MOA.

27. Baker and Discovery agreed to indemnify Developers with respect to liability incurred or amounts paid in satisfaction or settlement of any or all claims relating to [Discovery's] nonperformance of an Obligation or any other matter covered by a Bond.

28. Baker and Discovery failed to indemnify Developers with respect to the \$150,000.00 Developers incurred in settling with the MOA.

29. Baker and Discovery agreed to indemnify Developers with respect to liability incurred or expenses paid in connection with claims relating to a bonded obligation, including without limitation, attorneys' fees and all legal expenses related to the adjustment of claims or expenses.

30. Baker and Discovery failed to indemnify Developers or any amounts of Developers' actual costs and attorneys' fees due to the MOA's claim on the Bond, in an amount not less than \$39,304.15.

31. Baker and Discovery are liable for all costs and attorneys' fees incurred by Developers, including, but not limited to, those costs and fees incurred in this lawsuit to enforce the terms of the GAI.

32. Developers has incurred damages as a direct and proximate result of Baker and Discovery's failure to pay the losses, costs, and attorneys' fees of Developers, in an amount not less than \$189,304.15, the exact amount to be proven at trial.

COUNT II. BREACH OF INDEMNITY CONTRACT; FAILURE TO PAY BOND
PREMIUMS

33. Developers reincorporates allegations 1 through 33 as though contained herein.
34. Baker and Discovery agreed to pay to Developers, an initial premium for any bond, and further, to pay all renewals, extensions and premium adjustments for any bond issued by Developers.
35. Beginning on February 21, 2007 and continuing through February 21, 2016, Baker and Discovery failed to pay at least 32 separate bond or renewal premiums.
36. Each failure to pay bond premiums or renewals is a distinct and continuing breach of the GAI.
37. Developers has incurred damages as a direct and proximate result of Baker and Discovery's failure to pay bond and renewal premiums in an amount not less than \$37,936.00, the exact amount to be proven at trial. Copies of the invoices are attached as Exhibit E.

WHEREFORE, Developers requests the Court to enter judgment:

1. Against Defendants, Lee E. Baker and Discovery Construction, Inc., jointly and severally, in a principal amount not less than \$227,240.00 plus costs, interest, and actual attorney fees pursuant the indemnity agreement, the exact amount to be proven at trial.
2. For such further relief as the Court deems just and equitable.

Dated this 9th day of May, 2016.

LAW OFFICES OF CHARLES G. EVANS
Attorneys for Developers Surety and indemnity Company

By: /s/ Corey G. Stewart
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